IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 82 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAMIMBEN USMAN GANIBHAI FATANI - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HARSHIT S TOLIA for Applicant(s) : 1,
MR HL JANI A.P.P. for Respondent(s) : 1,
MR MM TIRMIZI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 13/07/2006

ORAL JUDGMENT

1. Rule. Mr. Jani learned A.P.P., waives service of rule on behalf of the opponent State and learned advocate Mr. Tirmizi waives service of rule on behalf of opponent

no. 2. This application has been filed by the original complainant.

2. Initially Mr. Tirmizi learned advocate for opponent no. 2 raised the contention with regard to maintainability of the application under Section 397 read with 401 of the Criminal Procedure Code, but subsequently, he has given it up. In view of the same now the impugned order is examined and this decision is given on merits of the said order.

3. The impugned order has been passed by the learned Additional Sessions Judge and Presiding Officer, Sessions Court, Bhavnagar, on 19th January, 2006, below Exh. 1 in Criminal Misc. Application No. 62 of 2006. The said application was filed under Section 438 of the Criminal Procedure Code by opponent no. 2 who is the original accused of F.I.R., registered at C.R. No. I-8 of 2006 with “C” Division Police Station, Bhavnagar, for offences punishable under Sections 395, 450, 506(2) etc., of the Indian Penal Code.

4. The ground of challenge is, as enumerated in the application, and as submitted by Mr. Tolia learned advocate for the applicant, that the learned Judge has

not assigned any reasons, why benefit under Section 438 of the Criminal Procedure Code is required to be granted to opponent no. 2, nor he has prescribed any conditions or fixed any time limit. In the submission of Mr. Tolia, this order is, therefore, illegal and is required to be quashed and set aside.

5. As against that Mr. Tirmizi learned advocate for opponent no. 2 has submitted that one of the accused who was arrested has been granted regular bail and, therefore, as and when this opponent will apply under Section 439 of the Criminal Procedure Code he will be granted regular bail. It is also submitted by him that the Police has asked for “B” summary and report has been submitted to the learned Trial Court which is yet to be decided. Mr. Jani learned A.P.P., for the opponent State has also assailed the order on behalf of the State and has supported the contentions of Mr. Tolia.

6. Having gone through the impugned order and having considered the rival submissions, it clearly appears that the reasons that have weighed with the learned Judge are not being reflected in his order. It is time and again said by this Court as well as the Apex Court that the reasons in brief are required to be

assigned for the decision taken by the Court on application either under Section 438 or Section 439 of the Criminal Procedure Code. In the decision rendered by the Apex Court in the case of **Anwari Begum v. Sher Mohammad reported in 2005 (7) S.C.C., pg. 326**, it has been laid down by the Apex Court that the learned Judge while dealing with the bail application has not to be so cryptic, as to refrain from assigning reasons. Without reasons it is not known why the bail is granted or refused by the concerned Court. Secondly, the learned Judge has also not prescribed any condition on which the application of opponent no. 2 has been granted. Under Section 438 of the Criminal Procedure Code, certain requisites have been prescribed which are required to be incorporated in the order by way of conditions. Even that has not been done. Further, protection under Section 438 of the Criminal Procedure Code has to be for a limited period during which the concerned accused can approach the appropriate Court of law under Section 439 of the Criminal Procedure Code and obtain regular bail. Even that time limit is not prescribed in this order. In short The impugned order shows that neither brief facts nor reasons have been stated nor conditions have been prescribed nor time limit has been fixed by the learned Judge. These elementary requirements have not been

complied with by the learned Judge. The application seems to have been disposed of in utter haste. Such hasty approach towards deciding application under Section 438 of the Criminal Procedure Code is required to be deprecated and it is now expected that henceforth the learned Judge will refrain from adopting such approach.

7. For the aforesaid reasons, the impugned order is illegal and is required to be quashed. However, when this order is quashed and set aside the apprehension on the part of opponent no. 2 stands revived. With a view to protect his interest, certain direction is also required to be given to the Investigating Officer. Hence, the following order.

8. This revision application is allowed. The impugned order is quashed and set aside. The Investigating Officer is directed not to arrest opponent no. 2 till the decision at the request of Police for grant of “B” Summary is taken by the appropriate Court. In the event, the Summary is not granted as prayed for and the Police decides to arrest opponent no. 2, prior intimation of one week shall be given to opponent no. 2 to approach him again the concerned Court under Section 438 of the Criminal Procedure Code. Rule is made absolute

in aforesaid terms.

[Akshay H. Mehta, J.]

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